A

AMATHEVELLI R RAMASAMY

v.

PP

B

COURT OF APPEAL, PUTRAJAYA
MOHD GHAZALI YUSOFF JCA
RAUS SHARIF JCA
HELILIAH MOHD YUSOF JCA
[CRIMINAL APPEAL NO: N-05-30-2003]

C

16 MAY 2008

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Appeal against conviction and sentence - Grounds of appeal - Delay in providing grounds of judgment - Admissibility of information leading to fact*

D *discovered - Prima facie case - Defence - Whether conviction unsafe*

CRIMINAL PROCEDURE: *Judgment - Delay in writing - Whether whole proceedings vitiated - Prejudice to accused - Fairness to State and society as well as to accused*

E ***EVIDENCE:*** *Information leading to fact discovered - Principles applicable - Admissibility of statement - Voluntariness - Whether ingredients satisfied - Evidence Act 1950, s. 27*

CRIMINAL PROCEDURE: *Trial - Admissibility of statement -*

F *Information leading to fact discovered - Principles applicable - Voluntariness - Whether ingredients satisfied - Evidence Act 1950, s. 27*

CRIMINAL PROCEDURE: *Conviction - Validity of conviction - Whether conviction unsafe - Prima facie case - Onus of proof on defence*

G *- Circumstantial evidence*

CRIMINAL PROCEDURE: *Prosecution - Prima facie case - Whether proven - Strong circumstantial evidence - Inferences drawn from facts*

EVIDENCE: *Circumstantial evidence - Inferences from facts - Prima*

H *facie case, whether proven - Robbery and murder - Whether integral part of one and same transaction - Other incriminating evidence*

CRIMINAL PROCEDURE: *Trial - Defence - Onus of proof - Whether accused's defence difficult to believe - Whether raised reasonable*

I *doubt on prosecution's case - Evidence as a whole*

This was an appeal by the accused against her conviction and sentence to death under s. 302 of the Penal Code for the murder of one Soosaiammah Arokiasamy ('deceased'). The deceased was found dead by her husband at his sundry shop at about 10am. Some money that he kept in the cashier counter of his shop was missing; also missing was a gold chain that the deceased was wearing that morning. The accused was arrested by one K/Insp Lee Kui Lin ('SP12') and during questioning, the accused gave SP12 information that she had the deceased's gold chain kept in her house, which information was reduced by SP12 into writing ('P51'). The accused then brought the police party to her house, where the gold chain was found in her cupboard. The trial judge conducted a trial within a trial before admitting P51. At the end of the prosecution's case, the judge ruled that the prosecution had proved a *prima facie* case against the accused and called upon her to enter her defence. The accused denied murdering the deceased and also denied informing the police that the gold chain belonging to the deceased was in her possession. The judge found that the accused's version did not raise any reasonable doubt against the prosecution's case and, accordingly, convicted her and sentenced her to death. The accused's grounds of appeal were as follows: (i) there was prejudice caused to the accused due to an inordinate and unexplained delay on the judge's part in providing his written judgment; (ii) the judge was wrong in accepting the evidence of recovery of the jewellery purportedly belonging to the deceased under s. 27 of the Evidence Act 1950 ('Act'); and (iii) the accused's conviction was unsafe and should be set aside because, firstly, the judge was wrong in calling for the accused to enter her defence and, secondly, the judge had misdirected himself seriously in law on the onus of proof on the defence.

Held (dismissing the appeal)
Per Raus Sharif JCA delivering the judgment of the court:

(1) Although it regrettably took the judge about five years to supply the grounds of judgment to the accused, it should not necessarily result in vitiating the whole proceedings. This was more so when it was not shown through the notes of evidence that the accused had suffered prejudice as a result of the delay. Further, in the administration of justice, the courts must be fair not only to the accused person but also to the State and society. It would be unfair to the State and society if the accused were given an outright acquittal just

A because of the delay in supporting the grounds of judgment, especially so when the accused had been found guilty of the serious crime of murder. The appeal must, therefore, be heard on its merits. *Tan Hun Wah v. PP and Anor Appeal* (foll). (para 17)

B

(2) For information leading to discovery of a fact or thing to be admissible under s. 27 of the Act, there is no duty on the prosecution to establish the voluntariness of the information. In the present case, although a trial within a trial was C conducted by the judge (which, in fact, was unnecessary), it appeared from the record that it was conducted not for the purpose of establishing the voluntariness of the information but for the determination of whether the ingredients of s. 27 of the Act had been fulfilled. In this instance, the judge was D correct in finding that all the ingredients of s. 27 of the Act had been fulfilled. Clearly, the accused gave information while she was in custody to SP12, who reduced it into writing. The trial judge accepted the evidence of SP12 and, in fact, P51 lent credence to SP12's oral evidence. This evidence E was relevant as it directly connected the accused to the gold chain recovered from the locked cupboard at her house. Accordingly, there was no error on the judge's part in admitting P51 as evidence against the accused. (paras 24 & 25)

F

(3) On the facts, there was strong circumstantial evidence for the trial judge to conclude that there was a *prima facie* case that the accused was the perpetrator of the murder as well as the robbery. It is trite law that in a case where murder and robbery form an integral part of a transaction, the recent G and unexplained possession of the stolen property is evidence from which a court may draw inferences that the accused not only committed the robbery but also the murder. Applying the test in *Ganesh Lal v. State of Rajasthan* to the present case, there was no doubt that the robbery H and the murder were an integral part of one and the same transaction. The recovery of the gold chain belonging to the deceased from the accused was almost immediate. Above all, there was, on the facts, other incriminating evidence or circumstances connecting the accused with the offence. I

Hence, the judge was not wrong to rule that the prosecution had proved a *prima facie* case against the accused. (paras 28 & 29)

(3a) The defence put up by the accused, when tested against the totality of the evidence adduced, was difficult to believe. The defence had not raised any reasonable doubt on the prosecution's case. There was no explanation by the accused as to how she came into possession of the deceased's gold chain. Thus, taking the evidence as a whole, the accused's conviction was not only supported by the recovery of the deceased's gold chain from the accused after the deceased was murdered – which remained unexplained – but by strong circumstantial evidence which, when added together, led to the irresistible conclusion that it was the accused who committed the crime. (paras 34 & 35)

(4) In conclusion, after reading the record and carefully scrutinising the notes of evidence and the grounds of judgment, the decision of the judge was not unjustifiable. There was no doubt that it was the accused who had murdered the deceased. The conviction was safe. (para 37)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan tertuduh terhadap sabitan dan hukuman mati yang dijatuhkan ke atasnya di bawah s. 302 Kanun Keseksaan kerana membunuh seorang Soosaiammah Arokiasamy ('simati'). Simati didapati mati oleh suaminya di kedai runcit mereka pada lebih kurang jam 10 pagi. Sejumlah wang yang di simpan di dalam laci kaunter di kedainya telah hilang; turut hilang adalah seutas rantai emas yang dipakai simati pada pagi tersebut. Tertuduh ditangkap oleh seorang K/Insp Lee Kui Lin ('SP12'), dan semasa disiasat tertuduh memberi maklumat kepada SP12 bahawa beliau ada menyimpan rantai emas simati di rumahnya, maklumat mana telah ditulis oleh SP12 ('P51'). Tertuduh kemudian membawa pasukan polis ke rumahnya di mana polis menjumpai rantai emas berkenaan tersimpan di dalam almarinya. Hakim bicara telah melaksanakan perbicaraan dalam perbicaraan sebelum menerima masuk P51. Di akhir kes pendakwaan, hakim memutuskan bahawa pendakwaan telah membuktikan kes *prima facie* terhadap tertuduh dan memanggil tertuduh untuk membela diri. Tertuduh menafikan membunuh simati dan menafikan memberitahu polis bahawa rantai emas kepunyaan simati ada dalam milikannya. Hakim mendapat versi tertuduh gagal membangkitkan sebarang keraguan munasabah

terhadap kes pendakwaan, dan dengan itu telah mensabit tertuduh dan menjatuhkan hukuman mati di atas. Alasan-alasan rayuan tertuduh adalah seperti berikut: (i) berlaku prejudis kepada tertuduh disebabkan oleh kelewatan panjang yang tidak bersebab hakim dalam menyiapkan penghakiman bertulis; (ii) hakim khilaf dalam menerima masuk keterangan penemuan barang kemas yang dikatakan kepunyaan simati di bawah s. 27 Akta Keterangan 1950 ('Akta'); dan (iii) sabitan tertuduh tidak selamat dan harus diketepikan kerana, pertama, hakim khilaf dalam memanggil pembelaan, dan kedua, hakim telah dengan serius tersalah arah akan dirinya di sisi undang-undang mengenai beban bukti yang dipikul oleh pembelaan.

Diputuskan (menolak rayuan)
Oleh Raus Sharif HMR menyampaikan penghakiman mahkamah:

(1) Walaupun memang dikesalkan bahawa hakim mengambil masa lebih kurang lima tahun untuk membekal alasan penghakiman kepada tertuduh, ia tidak semestinya berakhir dengan menjejaskan keseluruhan prosiding. Lebih-lebih lagi bilamana ianya tidak ditunjukkan bahawa tertuduh telah mengalami prejudis akibat dari kelengahan. Selain itu, dalam pentadbiran keadilan, mahkamah harus adil bukan sahaja kepada tertuduh tetapi juga kepada pemerintah dan masyarakat. Adalah tidak adil kepada pemerintah dan masyarakat jika tertuduh diberikan pembebasan mutlak cuma disebabkan oleh kelengahan membekalkan alasan penghakiman lebih-lebih lagi apabila tertuduh didapati bersalah atas kesalahan yang serius seperti bunuh. Rayuan dengan itu harus didengar di atas merit. *Tan Hun Wah v. PP and Anor Appeal* (diikuti).

(2) Untuk menerima masuk maklumat yang membawa kepada penemuan sesuatu fakta atau benda di bawah s. 27 Akta, tiada tanggungan di pihak pendakwaan untuk membuktikan kesukarelaan maklumat tersebut. Dalam kes semasa, walaupun satu perbicaraan dalam perbicaraan diadakan oleh hakim (yang sebenarnya tidak perlu), rekod menunjukkan bahawa ianya diadakan bukan untuk maksud membuktikan kesukarelaan maklumat tetapi untuk menentukan sama ada ingredien-ingredien s. 27 Akta telah dipenuhi. Dalam hubungan ini, hakim betul apabila mendapati bahawa kesemua ingredien s. 27 Akta telah dipenuhi. Jelas bahawa tertuduh memberi maklumat kepada SP12 semasa beliau

berada di dalam tahanan, dan maklumat diturunkan kepada tulisan oleh SP12. Hakim bicara menerima keterangan SP12, dan malah keterangan lisan SP12 tersebut disokong oleh P51. Keterangan ini relevan kerana ia mengaitkan tertuduh dengan rantai emas yang dijumpai dari almari di rumahnya. Oleh yang demikian, tiada kekhilafan di pihak hakim dalam menerima masuk P51 sebagai keterangan terhadap tertuduh.

(3) Berdasarkan fakta, terdapat keterangan ikut keadaan yang kukuh untuk hakim bicara merumuskan bahawa wujud kes *prima facie* bahawa tertuduh adalah orangnya yang melakukan bunuh dan rompakan berkenaan. Menjadi undang-undang mantap bahawa di mana bunuh dan rompakan menjadi bahagian integral sesuatu transaksi, maka pemilikan baru barangan curi yang tidak dijelaskan asal usulnya adalah keterangan dari mana mahkamah boleh membuat inferens bahawa tertuduh bukan sahaja telah melakukan rompakan tetapi juga bunuh. Menggunapakai ujian di dalam *Ganesh Lal v. State of Rajasthan* kepada kes semasa, tiada keraguan bahawa rompakan dan bunuh adalah bahagian integral dalam transaksi yang satu dan sama. Penemuan rantai emas kepunyaan simati dari milikan tertuduh berlaku hampir serta merta. Selain itu, terdapat keterangan atau halkeadaan menyalah diri lain yang menghubungkan tertuduh dengan kesalahan. Jelas bahawa hakim tidak khilaf dalam memutuskan pendakwaan telah membuktikan suatu kes *prima facie* terhadap tertuduh.

(3a) Pembelaan yang dikemukakan tertuduh, dilihat dari keseluruhan keterangan yang ada, sukar untuk dipercayai. Pembelaan gagal membangkitkan sebarang keraguan munasabah terhadap kes pendakwaan. Tiada penjelasan oleh tertuduh tentang bagaimana beliau memiliki rantai emas simati. Dengan demikian, mengambilkira keseluruhan keterangan, sabitan tertuduh bukan sahaja disokong oleh penemuan rantai emas simati dari tertuduh selepas pembunuhan – yang masih tiada penjelasan mengenainya – tetapi juga oleh keterangan ikut keadaan yang kuat, yang mana, setelah dipertimbang secara bersekali, membawa kepada konklusi tidak dapat tidak bahawa tertuduhlah orangnya yang melakukan jenayah tersebut.

A **(4)** Pada konklusinya, setelah membaca rekod-rekod dan memeriksa dengan teliti nota-nota keterangan serta alasan-alasan penghakiman, keputusan hakim bukanlah tidak berdasarkan keadilan. Tiada keraguan bahawa tertuduhlah orang yang membunuh simati. Sekaligus, sabitan adalah
B selamat.

Case(s) referred to:
Chandrasekaran & Ors v. PP [1971] 1 MLJ 153 ***(refd)***
Emperor v. Sheikh Neamatulla [1913] 17 CWN 1077 ***(refd)***
Francis Antonysamy v. PP [2005] 2 CLJ 481 FC ***(refd)***
C *Ganesh Lal v. State of Rajasthan [2002] Cr LJ 967* ***(foll)***
Krishna Rao Gurumurthi & Anor v. PP & Another Appeal [2007] 4 CLJ 643 CA ***(refd)***
Pasupathy Kanagasaby v. PP [2005] 1 CLJ 442 CA ***(refd)***
Ramanathan Chelliah v. PP [2005] 1 CLJ 858 HC ***(refd)***
D *Re Sogaimuthu Padayachi AIR [1926] Mad 638* ***(refd)***
Tan Hun Wah v. PP and Another Appeal [1994] 1 MLJ 382 ***(foll)***
Voon Chin Fatt v. PP [1948-49] MLJ Supp 131 ***(refd)***
Yusoff Kassim v. PP [1992] 3 CLJ 1535; [1992] 1 CLJ (Rep) 376 SC ***(refd)***

E **Legislation referred to:**
Criminal Procedure Code, s. 113
Evidence Act 1950, s. 27

For the appellant - Karpal Singh (Ram Karpal Singh with him); M/s Karpal Singh & Co
F *For the respondent - Mangaiarkarsi Krishnan DPP*

[Appeal from High Court, Seremban; Criminal Trial No: 45-11-98]

Reported by Suresh Nathan

G

JUDGMENT

Raus Sharif JCA:

H **[1]** The accused was convicted for the murder of one Soosaiammah a/p Arokiasamy and was sentenced to death. The charge against the accused reads:

> Bahawa kamu pada 17.5.1998, di antara jam 6.50 pagi hingga jam
I 10.00 pagi, di Kedai Runcit No. 156, Lorong 4, Kampong Gatco, Air Hitam, di dalam Daerah Jempol, di dalam Negeri, Negeri Sembilan telah melakukan pembunuhan dengan menyebabkan

kematian SOOSAIAMMAH A/P AROKIASAMY, K/P: 660301-05-5456 dan dengan itu telah melakukan satu kesalahan yang boleh dihukum di bawah Seksyen 302 Kanun Keseksaan.

[2] The accused appealed to this court against her conviction and sentence. Having heard arguments of the parties, we adjourned the matter for our consideration and decision. We now give our decision and the reasons for the same.

Facts

[3] 17 May 1998 was a tragic day for Gabrial a/l S. Raju (SP7). On that day, at about 10am he found his wife's body, Soosaimmah a/p Arokiasamy ("the deceased") sprawled on the floor covered in blood at his sundry shop at No. 156, Lorong 4, Kampong Gatco, Air Hitam, Jempol. He subsequently found about RM500-RM600, which he kept in the cashier counter of his shop, missing. Also missing was a gold chain that the deceased was wearing that morning.

[4] SP7 immediately called the police. He informed the police that the deceased was robbed and murdered. A number of policemen came to the crime scene. First to arrive were Kpl Mohd. Din bin Hj. Mohd Diah (SP2) and L/Kpl Md Rodzi Yadi. They arrived at the crime scene at 10.35am. The Investigating Officer, Ketua Inspektor Yong Soun Lian (SP13), together with Inspektor Nor Azlinda bte Nordin (SP15) and a police photographer L/Kpl Sahaimi Mohamad (SP3) arrived at about 11.20am.

[5] At the crime scene, SP13 found the deceased body lying on the floor near the cashier counter. The body was covered in blood and smelled of acid. Upon examination of the body, he found a slash wound at its neck. SP13 recovered an empty formic acid bottle at the vegetable rack and a knife (P19B) with blood stain. SP13 also recovered a few broken leg portions of a stool and a broken seat of a stool. Also recovered was an identification card belonging to Shamsuri bin Hashim (SP6) on the cashier counter. SP6 was arrested and later released as the investigation confirmed that he was not involved in the commission of the crime.

[6] A post-mortem on the deceased body was conducted at Kuala Pilah General Hospital by Dr. Zahari b. Noor (SP9) a forensic pathologist attached to Kuala Lumpur General Hospital. According to SP9, the deceased had numerous injuries including

A scalding on the head, face, chest and hands. But SP9 was of the opinion that the cause of death of the deceased was due to a slash wound at the right side of her neck which had severed off the sterna mastoid muscle and carotid artery vein and caused massive bleeding. SP9 testified that the knife (P19B) recovered at
B the scene of crime, could cause the injury. SP9 also testified that the deceased had some defensive wounds. He attributed the scalding on the body ie, head, face, chest and hands of the deceased due to the deceased coming into contact with acid from the front direction.

C

[7] The accused was arrested by K/Insp Lee Kwu Lin (SP12) on 18 May 1998 at about 12.45am at her house at No. 130, Lorong 5, Kampong Gatco. Her house is about 500 meters from the crime scene. The police found scalding marks on the accused
D left arm and lower part of her lips. At about 11am on the same day the accused was examined by Dr. Sandra Krishnan (SP14). SP14 was of the opinion that the injuries as found on the accused were consistent of coming into contact with acid and that injuries were one or two days old.

E

[8] While in custody, the accused gave certain information to the police. At about 5.15pm on 18 May 1998 she led the police to the recovery of the gold chain (P40) and lockets (P44A-F) in a cupboard of her house. The cupboard was initially locked and
F was opened by the accused by using a key which she wears to her chain around her neck. P40 was subsequently identified by SP7 to be the gold chain belonging to the deceased.

[9] The accused lived with her husband Durairaj a/l Kolandaveloo (SP10) and their children. They were rubber tappers. Normally,
G they would go to tap rubber together but in separate motorcycles. SP10 would use Honda Cub 80 bearing the plate no. NJR 6230 and the accused used a red Yamaha no. WD 2480. But, on the day in question, SP10 went to work alone riding his Honda Cub. He left the house at 5.30am. The accused came later, between
H 6.30am to 7am using the red Yamaha motorcycle. She tapped for a while and left the rubber plantation at about 9.30am as she was complaining to SP10 that she was not well.

[10] At the end of the prosecution's case, the learned trial judge
I ruled that the prosecution had proved a *prima facie* case against the accused and called upon the accused to enter her defence. The accused gave evidence on oath. She was the only witness for

the defence. In her evidence she denied murdering the deceased. She also denied informing the police that the gold chain (P40) belonging to the deceased, was in her possession.

[11] The learned trial judge rejected the accused's defence. He also found that the accused's version had not raised any reasonable doubt against the prosecution's case. He convicted the accused and the mandatory death sentence was imposed on her.

Issues

[12] Before us, learned counsel for the accused raised three main grounds in support of this appeal. His first ground was that there was a delay on the part of the learned trial judge in providing his written judgment. He submitted that the inordinate and unexplained delay in the supply of the grounds of judgment has caused the accused prejudice. Secondly, the learned trial judge was wrong in accepting the evidence of recovery of the jewellery purportedly belonging to the deceased under s. 27 of the Evidence Act 1950. And thirdly, having regard to the totality of evidence, the accused's conviction is unsafe and should be set aside.

Findings

(i) Delay In Providing Written Judgment

[13] There is no dispute that there was a delay on the part of the trial judge in providing his written judgment. In this case the trial proper commenced on 25 January 2000 and concluded on 8 November 2002. The grounds of judgment were only supplied to the accused on 5 December 2007.

[14] Learned counsel for the accused submitted that the long delay in supplying the grounds of judgment has caused the accused prejudice on the basis that there was every likelihood not only that the trial judge's impression on the demenour of witnesses would be blurred, but also the delay would increase the chances of omission on the part of the learned trial judge to deal with material facts and issues in the grounds of judgment, which ought to have been favourable to the accused. In support, the learned counsel cited the following cases and urged the court to release the accused forthwith. *Voon Chin Fatt v. Public Prosecutor* [1948-49] MLJ Supp 131; *Yusoff Kassim v. Public Prosecutor* [1992] 3 CLJ 1535; [1992] 1 CLJ (Rep) 376; *Tan Hun Wah v. Public*

Prosecutor and Another Appeal [1994] 1 MLJ 382; *Pasupathy Kanagasaby v. PP* [2005] 1 CLJ 442; and *Ramanathan Chelliah v. PP* [2005] 1 CLJ 858.

[15] On this issue, we are in agreement with the submission of the learned Deputy Public Prosecutor that the delay *per se* in supplying the written judgment on the part of the learned trial judge does not automatically render the decision of the learned trial judge to be vitiated or set aside. An important case in this issue is the decision of the Supreme Court in *Tan Hun Wah v. Public Prosecutor and Another Appeal (supra)*. In that case, the accused were jointly charged for the offence of trafficking in raw opium. They were found guilty and sentenced to death by the High Court. The trial proper commenced on 24 January 1988 and concluded on 30 October 1988. The grounds of judgment were supplied to the accused only sometime in the month of February 1992. There was a delay of about four years in supplying the grounds of judgment.

[16] The issue of delay in the trial and also in providing for the written judgment was incorporated into the petition of appeal and brought to the attention of the Supreme Court by the learned counsel at the very outset of the appeal. Mohamad Azmi SCJ, speaking for the Supreme Court was highly critical of the delays both in the trial process and in providing the written judgment but went on to explain that:

> There are however many causes of delay in court proceedings, and the delay itself can take the form of an abuse of process or may appear in various forms of prejudice or unfairness. This principle that 'justice delayed is justice denied' is of general application, and it does not follow that every form of delay, though frowned upon by the courts, should result in vitiating the whole proceedings.

[17] We adopt the principle as enunciated by the Supreme Court. In the present case, it took the learned trial judge about five years to supply the grounds of judgment to the accused. It is regrettable, but we are of the same view with the Supreme Court that it should not necessary result in vitiating the whole proceedings. This is more so when it is not shown to us through the notes of evidence that the appellant has suffered prejudice as the result of the delay in supplying the grounds of judgment to the accused. Further, we hold the view that in the administration of

justice, the courts must be fair not only to the accused person, but must also be fair to the State and society. It would not be fair to the State and society whose penal law are made and administered, if the accused is given an outright acquittal just because of the delay in supplying the grounds of judgment. This is especially so when the accused has been found guilty of a serious crime of murder. We, therefore hold that this appeal must be heard on its merits.

(ii) Discovery Statement Under s. 27 Of The Evidence Act 1950

[18] In this case, the accused upon her arrest on 18 May 1998 was questioned by Ketua Inspektor Lee Kui Lin (SP12). During the questioning, the accused informed SP12 certain information which was reduced by SP12 into writing. The information was admitted at the trial and marked as exh. P51. It reads:

> Encik, rantai leher emas yang saya ambil daripada perempuan itu ada saya simpan di rumah saya di No. 130, Jalan 5, NUPW Gatco, Air Hitam …

[19] The accused then brought the police party to her house. At her house, the accused opened a locked cupboard in her room. She opened the locked cupboard by using a key which she wears to her chain around her neck. After unlocking the cupboard, she took out a green blouse and in its pocket, she took out a folded blue handkerchief whereby a gold chain and some lockets were kept.

[20] The learned trial judge conducted a trial within a trial before admitting P51. In admitting P51 the learned trial judge said:

> … Ia diterima masuk setelah saya perhatikan ia memenuhi 4 syarat iaitu OYDT berada di dalam tahanan polis semasa maklumat diberikan, fakta diperolehi sebagai akibat maklumat yang diberikan oleh OYDT, maklumat itu adalah berkaitan dengan fakta yang diperolehi dan fakta itu adalah fakta yang relevan yang berkaitan dengan perlakuan jenayah.

[21] Learned counsel for the accused argued that the learned trial judge ought not to have admitted P51 under s. 27 of the Evidence Act 1950. This is because the prosecution, in the trial within the trial through the evidence of Ketua Inspektor Lee Kui Lin (TW1) proceeded on the basis of recording a statement under s. 113 of the Criminal Procedure Code. Thus, it cannot then be admitted as evidence under s. 27 of the Evidence Act 1950.

[22] The way s. 27 of the Evidence Act 1950 should be approached has been fairly worked out in many cases. In *Francis Antonysamy v. Public Prosecutor* [2005] 2 CLJ 481, the Federal Court after considering a long line of authorities, held at pp. 498-499 that:

> In our opinion it is illogical to suggest that s. 27 is subject to the voluntariness rule in s. 24. If that were to be so the desired evidence can be admitted under s 24 without there being any need for s. 27. The fact that s. 27 has been specifically enacted is therefore a clear indication that it has a purpose of its own to serve. As it applies only to a restricted and specified type of evidence as opposed to s. 24 it can only mean that it is an independent provision which is unaffected by s. 24, or, for that matter, any other statutory provision regulating the manner of taking or recording statements from any person …
>
> … Since voluntariness is not a condition of admissibility of information supplied under s. 27 the privilege against self-incrimination which is manifested in an involuntary statement or in a statement made in breach of the requirements of s. 112 must be deemed to have been impliedly abrogated insofar as s. 27 is concerned. It follows that the argument of the learned counsel that s. 27 is subject to the voluntariness rule in s. 24 and the privilege against self-incrimination in s. 112 cannot be sustained.

[23] In fact, as early as in 1971, Raja Azlan Shah J (as his Royal Highness then was) in *Chandrasekaran & Ors v. PP* [1971] 1 MLJ 153, has this to say on s. 27. At p. 158 he said:

> Section 27 is a concession to the prosecution. It is the express intention of the legislature that, even though such a statement is otherwise hit by the three preceding sections, *viz* ss. 24-26 of the Evidence Ordinance, any portion thereof is nevertheless admissible in evidence if it leads to the discovery of a relevant fact. The reason is that, since the discovery itself provides the acid test, the truth of the statement that led to the discovery is thereby guaranteed. Admissibility of evidence under s. 27 is in no way related to the making of the confession; rather, such evidence is admitted on clear grounds of relevancy as directly connecting the accused with the object recovered …

[24] From the above authorities, it is clear that for information leading to discovery of a fact or thing to be admissible under s. 27 of the Evidence Act 1950, there is no duty on the prosecution to establish the voluntariness of the information. In the present case, no doubt a trial within a trial was conducted by the learned trial judge (which in fact is not necessary), it appears from the

record that it was not for the purpose of establishing the voluntariness of the information. It was for the purpose of determining whether the ingredients of s. 27 of the Evidence Act 1950 had been fulfilled.

[25] In this case, the learned trial judge found all the ingredient of s. 27 had been fulfilled. We are in agreement with him. Clearly, the accused gave the information while she was in custody. The information was given to SP12. It was reduced into writing (P51) by SP12. The learned trial judge accepted the evidence of SP12. In fact P51 lent credence to the oral evidence of SP12. These evidences are relevant as it directly connected the accused to the gold chain (P40) recovered from a locked cupboard at her house. Accordingly, we find no error on the part of the learned trial judge in admitting P51 as evidence against the accused.

(iii) Is The Conviction Of The Accused Safe?

[26] Learned counsel for the accused submitted that the accused's conviction is unsafe and should be set-aside. He relied on two grounds. First, the learned trial judge was wrong in calling for the accused to enter for her defence. Second, the learned trial judge has misdirected seriously in law on the onus of proof on the defence.

[27] In respect of the first question it is pertinent to look again at the evidence adduced during the prosecution's case.

(a) SP7 testified that on 17 May 1998 the deceased was wearing her gold chain (P40) when she left the house in the morning. But when he found her body later that morning, P40 was missing. P40 was recovered from the accused's locked cupboard at about 5.15pm on 18 May 1998. The key to the cupboard was in the possession of the accused. SP10, the accused's husband confirmed that the key to the cupboard had always been with the accused. He also testified that he has never seen P40 before.

(b) SP11, at about 7am on 17 May 1998, saw a red Yamaha motorcycle parked outside the shop. SP10 confirmed that the accused used a red Yamaha motorcycle to go to work. SP10 in his evidence testified that on the day in question, the accused came to work on her own using the red Yamaha motorcycle and only arrived at her work place about 6.30am to 7am.

(c) An empty formic acid bottle was also found at the crime scene. SP9, the Pathologist testified that there was burn marks by acid on the deceased clothes and body especially on her face, hair, chest and both her arms. SP2, SP7 and SP13 testified that the deceased body smelled of acid. Related to this fact is the evidence of:

(i) SP13, who met the accused at the crime scene, at about 12.30pm on 17 May 1998 saw injuries at the lower part of the accused's lips and left arm.

(ii) SP14, the doctor who examined the accused on 18 May 1998, at about 11am found injuries at the lower part of her lips and her left arm. According to SP14, the injuries were consistent of coming into contact with acid and that the injuries were of one or two days old.

[28] Based on the evidence adduced as mentioned above, there is a strong circumstantial evidence for the learned trial judge to conclude that there is a *prima facie* case that the accused was the perpetrator of the murder as well as the robbery. It is a trite law that in a case where murder and robbery form an integral part of a transaction, the recent and unexplained possession of the stolen property is evidence from which a court may draw the inferences that the accused not only committed robbery but also murder. (See *Emperor v. Sheikh Neamatulla* [1913] 17 CWN 1077, *Re Sogaimuthu Padayachi* AIR [1926] Mad. 638 and *Ganesh Lal v. State of Rajasthan* [2002] Cr LJ 967. In *Ganesh Lal*'s case, Lahoti J (later CJ) held that to enable such presumption to be drawn against an accused person the following test must be satisfied:

(i) The offence of criminal misappropriation, theft or robbery relating to the articles recovered from possession of the accused and such offence can reasonably be held to have been committed as an integral part of the same transaction;

(ii) The time-lag between the date of recovery of articles from the accused is not wide as to snap the link between recovery and commission of the offence;

(iii) Availability of some piece of incriminating evidence or circumstances, other than mere recovery of articles, connecting the accused with such other offence;

(iv) Caution on the part of the court to see that suspicion, however strong, does not take the place of proof. In such cases, the explanation offered by the accused for his possession of the stolen property assumes significance.

[29] The tests adopted by Lahoti J was accepted with approval by this court in *Krishna Rao Gurumurthi & Anor v. PP & Another Appeal* [2007] 4 CLJ 643. Applying the same test to the present case, there is no doubt that the robbery and the murder were an integral part of one and the same transaction. The recovery of P40 belonging to the deceased from the accused was almost immediate. And above all, as demonstrated earlier, there are some other pieces of incriminating evidence or circumstances, connecting the accused with the offence. Hence, the learned trial judge was not wrong to rule that the prosecution had proved a *prima facie* case against the accused.

[30] On the issue of whether the learned trial judge has misdirected himself on the onus of proof on the defence, it is again necessary to examine the defence put forward by the accused. In this case, accused was the only witness for the defence. She gave her evidence on oath. She testified that on 17 May 1998 at about 7am she went to the deceased's shop on a motorcycle to buy petrol. As she entered the shop, she saw a Malay male strangling the deceased using a rope. Upon seeing the incident, she ran out of the shop but was stopped at the entrance by another Malay male who held her by the shoulder and punched her left lips. The man then splashed acid on her. As a result she got burnt on her left lips and left arm. According to her, she managed to free herself from the man and went straight to work to join her husband to tap rubber. At about 8.30am to 9am, she went home with her husband. She testified that she did tell her husband about the incident at the shop and her husband told her not to tell anyone about it.

[31] The accused further testified that she was arrested on 18 May 1998 at about 10am. On 19 May 1998, a police team took her to her house. There, she entered her room and opened her cupboard to take her clothes. At that time, SP12 took out a gold chain from the cupboard and asked her to hold the gold chain. A photograph of her standing beside the cupboard holding the gold chain was taken by the police. The accused concluded her testimony by stating that she did not kill the deceased and she had never at any time informed any police officer that the gold chain (P40) was in her possession.

[32] The learned trial judge in his ground of judgment dealt at length on the evidence of the accused. He tested it against the evidence adduced by the prosecution. At the end of it, he rejected the accused's evidence. He did not believe the accused's story. He also found that the defence has failed to raise a reasonable doubt against the prosecution's case.

[33] It is not surprising for the learned trial judge to arrive at the said decision. There are many discrepancies in the defence story. Here are some of them. First, the accused during cross-examination testified that she had told her husband (SP10) about the incident in the deceased's shop and SP10 in turn told her not to tell anyone about it. However, SP10 did not mention it and he was not cross-examined at all. Secondly, the appellant claimed that she saw two male Malays at the shop, one of them was strangling the deceased with a rope but the pathologist's evidence does not disclose any strangulation marks on the deceased. Thirdly, the accused during cross-examination denied that she met SP13 at the scene of the crime on 17 May 1998 at about 12.30pm and told him about the incident that she witnessed in the shop earlier that morning. But SP13 was never cross-examined on this point. Fourthly, the accused testified that it was SP12 who took out the chain and asked her to hold it for photograph to be taken. Yet SP12 was never cross-examined on this point. Fifthly, the accused claimed that she told SP14 that a Malay male had attacked her and splashed acid on her but SP14 testified that the accused never told her who splashed the acid on her.

[34] Like the learned trial judge, we are also of the view that the defence put up by the accused when tested against the totality of the evidence adduced is difficult to believe. The defence had not raised any reasonable doubt in the prosecution's case. There was no explanation by the accused as to how she came into possession of the deceased's gold chain.

[35] Thus, taking the evidence as a whole, we are of the view that the conviction of the accused was not only supported by the recovery of the deceased's gold chain from the accused after the deceased was murdered which remain unexplained, but by strong circumstantial evidence, adding them together, which lead to the irresistible conclusion that it was the accused who committed the crime.

[36] Before concluding, we wish to point out that the accused in the petition of appeal had raised the issue on the rejection by the learned trial judge of the defence's application to recall and cross-examine SP10. It was made at the close of the defence's case. However, this issue was abandoned by the learned counsel during the hearing before us. Thus, we are not making any ruling on this issue.

[37] In conclusion, having read the record and after carefully scrutinised through the notes of evidence and the grounds of judgment, we are unable to hold that the decision of the learned trial judge was not justifiable. We have no doubt that it was the accused who murdered the deceased. The conviction is safe. Hence, we are unanimous that this appeal be dismissed. The conviction and sentence are affirmed.